

UTILITIES DIVISION[199]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to Iowa Code sections 474.5, 476.2 and 17A.4, the Utilities Board (Board) gives notice that on September 7, 2017, the Board issued an order in Docket No. RMU-2016-0031, In re: Review of Rule Making Rules [199 IAC Chapter 3], “Order Commencing Rule Making,” proposing to amend the Board’s Chapter 3 rules governing rule making.

The Board is undertaking a comprehensive review of its rules and, as part of that review, is attempting to make the rules more readable, streamline reporting requirements in the rules, ensure the rules are current, and transition away from providing forms within the rules. The intent of these amendments is to promote ease of access for those interacting with the Board.

The proposed amendments would update and streamline the filing rules related to rule-making dockets and further clarify the processes used by the Board for petitions for rule making made by interested persons and the filing of comments once formal rule-making procedures have been commenced. The amendments would also update outdated statutory references and formalize the Board’s process for complying with the comprehensive rules review process in future years.

The order approving this Notice of Intended Action can be found on the Board’s Electronic Filing System (EFS) Web site, <http://efs.iowa.gov>, in Docket No. RMU-2016-0031.

Pursuant to Iowa Code section 17A.4(1)“a” and “b,” any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before October 17, 2017. The statement should be filed electronically through the Board’s EFS. Instructions for making an electronic filing can be found on the EFS Web site at <http://efs.iowa.gov>. Filings shall comply with the format requirements in 199 IAC 2.2(2) and clearly state the author’s name and address and make specific reference to Docket No. RMU-2016-0031. Paper comments may only be filed with approval of the Board.

No oral presentation is scheduled at this time. Pursuant to Iowa Code section 17A.4(1)“b,” an oral presentation may be requested, or the Board on its own motion after reviewing the comments may determine an oral presentation should be scheduled. Requests for an oral presentation should be filed in EFS by October 17, 2017, in Docket No. RMU-2016-0031.

After analysis and review of this rule making, the Board tentatively concludes that the proposed amendments, if adopted, will not have a detrimental effect on employment in Iowa.

These amendments are intended to implement Iowa Code sections 17A.1, 17A.7, 474.5, 476.1, and 476.2.

The following amendments are proposed.

ITEM 1. Amend rule 199—3.1(17A,474) as follows:

199—3.1(17A,474) Purpose and scope.

3.1(1) ~~In general~~ Scope. These rules shall govern the practice and procedure in all rule-making proceedings of the ~~Iowa utilities board (board) board~~.

3.1(2) Rules of construction. If any provision of a rule or the application of a rule to any person or circumstance is itself or through its enabling statute held invalid, the invalidity ~~does~~ shall not affect other provisions or applications of the rule which can be given effect without the invalid provision or application, and to this end the provisions of the rule ~~are~~ shall be severable.

3.1(3) Waiver. The board may waive the application of any of these rules pursuant to ~~199 IAC 1.3(17A,474)~~ rule 199—1.3(17A,474,476).

3.1(4) Forms and filing requirements. All rule-making filings shall substantially comply with the forms prescribed in ~~199 IAC 2.2(17A,474)~~ rule 199—2.2(17A,474). ~~All filings shall include an original and ten copies.~~ All filings shall be made electronically except as otherwise permitted by the board.

ITEM 2. Amend rule 199—3.2(17A,474) as follows:

199—3.2(17A,474) Notice of inquiry Preproceeding comments. In addition to seeking information by other methods, the board may solicit comments from the public on the subject matter of possible rule making by the board ~~issuing an order through its electronic filing system or by causing notice of the subject matter to be published in the Iowa Administrative Bulletin, indicating where, when, and how persons may comment.~~

ITEM 3. Amend rule 199—3.3(17A,474) as follows:

199—3.3(17A,474) Petition for adoption of rules.

3.3(1) Petitions. Any interested person may petition the board for the adoption, amendment, or repeal of a rule.

3.3(2) Stakeholder comments. Other interested persons may file written comments containing data, views, or arguments concerning the petition within 20 days of the filing of the petition. Reply comments may be filed within 27 days of the filing of the petition. The board may allow additional time for filing comments and reply comments at its discretion.

3.3(3) Board action on petition. Pursuant to Iowa Code section 17A.7(1), the board, by written order within 60 days after the filing of a petition for rule making, shall either deny the petition on the merits and state the reasons for the denial, commence a rule-making proceeding in accordance with Iowa Code section 17A.4, or, if exempt from the procedures of Iowa Code section 17A.4(1), adopt a rule.

ITEM 4. Rescind and reserve subrule **3.4(2)**.

ITEM 5. Adopt the following **new** subrules 3.4(5) and 3.4(6):

3.4(5) Written comments. Upon the commencement of a rule-making proceeding, any interested person may file written comments containing data, views, or arguments concerning the proposed adoption, amendment, or repeal of a rule within 20 days after the publication of the notice of rule making in the Iowa Administrative Bulletin or as otherwise ordered by the board. Comments shall be filed electronically unless otherwise permitted by the board.

3.4(6) Reply comments. The board may, in its discretion, allow for the filing of reply comments by interested persons.

ITEM 6. Rescind and reserve rules **199—3.5(17A,474)** and **199—3.6(17A,474)**.

ITEM 7. Amend subrule 3.7(1) as follows:

3.7(1) Filing. ~~The time period, as directed by the board, for filing of requests for oral presentation shall be not less than~~ Interested persons shall have 20 calendar days after the publication of the notice of rule making in the Iowa Administrative Bulletin to file a request for an oral presentation. The board may, in its discretion, extend the time period for making such requests.

ITEM 8. Amend subrule 3.7(2) as follows:

3.7(2) Action on proper request. ~~Within 15 calendar days of the filing of a request for oral presentation, the board shall determine if the request is in accordance with Iowa Code section 17A.4. If the board determines that the a request complies with Iowa Code section 17A.4, the board shall by written order schedule oral presentation on the rule making and shall cause a notice of the oral presentation to be published in the Iowa Administrative Bulletin. The notice shall state the date, time and place of the oral presentation and shall briefly describe the subject matter of the rule-making proceeding. The oral presentation on the rule making shall be not less than ten 20 calendar days after the publication of the notice. The board shall serve a similar notice on the party requesting oral~~

presentation, on any other persons filing written comments, and on the petitioner, if any all parties by filing the notice in the board's electronic filing system.

ITEM 9. Amend subrule 3.8(3) as follows:

3.8(3) *Rebuttal Comments and limitations.* The board may, in its discretion, permit ~~rebuttal statements of position~~ reply comments and request the filing of written ~~statements of position~~ comments subsequent to the adjournment of the rule-making oral presentation. The board may limit the time of any oral presentation and the length of any written presentation.

ITEM 10. Amend subrule 3.9(3) as follows:

3.9(3) *Statements.* Upon the adoption, amendment, or repeal of a rule or termination of a rule-making proceeding, and if timely written request is filed by any interested person pursuant to Iowa Code section ~~17A.4(1) "b,"~~ 17A.4(2), the board shall, within 35 days of the request, issue a formal written statement of the principal reasons for and against the adoption, amendment, or repeal of the rule, or termination of the rule-making proceeding, including the reasons why the board overruled the positions in opposition to the board's decision.

ITEM 11. Amend subrule 3.10(1) as follows:

3.10(1) *Regulatory analysis.* The board shall issue a regulatory analysis of a proposed rule, or of a rule adopted without prior notice and opportunity for public participation, when required by ~~1998 Iowa Acts, chapter 1202, section 10~~ Iowa Code section 17A.4A.

ITEM 12. Amend rule 199—3.11(17A,474) as follows:

199—3.11(17A,474) Review of rules.

3.11(1) *Ongoing review.* Pursuant to Iowa Code section ~~17A.7~~ 17A.7(2), upon receipt from the administrative rules coordinator of a request for formal review of a specified rule, the board will determine whether the rule has been reviewed within the preceding five years. If such a review was conducted, the board will report that fact to the administrative rules coordinator. If no such review has been conducted, the board will consider whether the rule should be repealed or amended or a new rule adopted in its place. The board will prepare a written report summarizing its findings, supporting reasons, and proposed course of action. Copies of the report will be sent to the administrative rules review committee and the administrative rules coordinator, and will be made available for public inspection.

3.11(2) *Process.* To facilitate the requirement to review its rules every five years, the board shall review a portion of its chapters each fiscal year over each five-year period.

a. In fiscal year 2018 and every fifth year thereafter, the board shall review Chapters 1 through 9 of its rules.

b. In fiscal year 2019 and every fifth year thereafter, the board shall review Chapters 10 through 18 of its rules.

c. In fiscal year 2020 and every fifth year thereafter, the board shall review Chapters 19 through 27 of its rules.

d. In fiscal year 2021 and every fifth year thereafter, the board shall review Chapters 28 through 36 of its rules.

e. In fiscal year 2022 and every fifth year thereafter, the board shall review Chapters 37 through 45 of its rules.

f. If the board adopts additional chapters in its rules, such chapters shall be reviewed every fifth fiscal year from the fiscal year in which they are made effective.